



STATE OF MICHIGAN  
RUTH JOHNSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

Updated September 14, 2012

**STAFF REVIEW  
OF "PROTECT OUR JOBS" PETITION**

**SPONSOR:** Protect Our Jobs, P.O. Box 1317 Novi, MI 48376-1317

**DATE OF FILING:** June 13, 2012, 2:20 p.m.

**NUMBER OF VALID SIGNATURES REQUIRED:** 322,609 signatures.

**TOTAL FILING:** At the time of filing, the sponsor estimated 110,000 sheets containing an estimated 684,286 signatures. According to the staff review, the actual filing consisted of 107,692 sheets containing 670,771 signatures.

**SIGNATURE SAMPLE**

**NOT INCLUDED IN SAMPLE:** 2,174 sheets containing 9,574 signatures. Petition sheets discounted for defective circulator certificates, defective petition headings, torn/mutilated/incomplete petition sheets, and blank petition sheets.

**INCLUDED IN SAMPLE:** 105,518 sheets containing 661,197 signatures.

**NUMBER OF SAMPLED SIGNATURES:** 544 signatures.

**SAMPLE RESULT:** 489 valid signatures; 55 invalid signatures.

**Valid signatures**

Registered signers; signatures verified: 489

**Invalid signatures**

Facially defective signatures: 27

Signatures determined invalid due to signer's registration status: 28

**Total** 544

## RESULT OF SIGNATURE SAMPLE

### **ESTIMATED NUMBER OF VALID SIGNATURES CONTAINED ON PETITION:**

594,348 signatures.

**STAFF FINDING:** The petition contains a sufficient number of valid signatures.

## CHALLENGE

A challenge was timely filed on behalf of Citizens Protecting Michigan's Constitution (CPMC) by Gary Gordon on August 8, 2012. The challenge raises four issues: (1) whether the sponsor omitted sections of the Constitution "altered or abrogated" by the proposal in violation of Const. Art. XII, §2 and MCL 168.482(3); (2) whether this petition – styled as a constitutional amendment – actually constitutes a general revision to the Constitution and is not the proper subject of an initiative petition; (3) whether the sponsors of this petition have improperly conflated the concepts of initiating laws by petition, invoking referendum by petition, and amending the constitution by petition; and (4) whether the proposal is defective because it cannot be summarized in the 100-word statement of purpose in violation of Const. Art. XII, §2 and MCL 168.32.

CPMC's challenge is limited to the form of the petition and does not call into question whether the petition sponsor submitted a sufficient number of valid signatures. This petition was approved as to form by the Board at its March 19, 2012 meeting.

### *1. Altered or Abrogated:*

CPMC argues that the form of the petition is defective because the petition's sponsors failed to include all of the provisions of the Constitution that the proposal alters or abrogates. According to CPMC, the sections of the Constitution altered or abrogated by the Protect Our Jobs proposal, but not identified in the petition, include the following:

Art. IV, §§ 48, 49	Legislature's power to enact laws
Art. VIII, §§ 5, 6	Powers of university governing boards

The Michigan Supreme Court has held that the legal test to be applied is whether the proposed constitutional amendment would "add to, delete from, or change the existing wording of the provision, or would render it wholly inoperative." *Ferency v Secretary of State*, 409 Mich 569, 597 (1980); see also *Massey v Secretary of State*, 457 Mich 410 (1998). The *Massey* Court reasoned that the average voter would be "confused rather than helped" by the "publication of all the other constitutional provisions which were or might be directly or only remotely, and possibly only contingently, affected by the proposed amendment." *Id.* at 417.

## 2. General Revision:

The leading Michigan case on whether a proposed constitutional amendment was so broad as to constitute a general revision of the constitution is *Citizens Protecting Michigan's Constitution v Secretary of State*, 482 Mich 960 (2008) (referred to below as the “*Reform Michigan Government Now* case” to distinguish it from CPMC’s instant challenge). While the Court of Appeals<sup>1</sup> considered the quantitative impact that the proposal had on numerous sections of the Constitution as well as the qualitative nature of those changes, the Supreme Court affirmed in result only. *Id.* Thus, CPMC acknowledges that “there is no bright line rule that distinguishes amendments from general revisions ...” CPMC Challenge, p. 16.

CPMC also argues that the Protect Our Jobs petition represents an unconstitutional wholesale revision of numerous state statutes governing labor relations. The challenge asserts that instead of proposing a constitutional amendment, the petition sponsors should have availed themselves of the established procedures for initiating legislation or invoking the right of referendum to effect statutory changes.

## 3. Conflating Ballot Access Methods:

In CPMC’s view, the Protect Our Jobs petition is fatally flawed because it conflates the concepts of initiating laws by petition, invoking referendum by petition, and amending the constitution by petition.

The Constitution establishes distinct routes for the people to present a proposal to the electorate: initiated legislation (Art. II, §9), referendum of legislation (Art. II, §9), constitutional amendment (Art. XII, §2), and the convening of a new constitutional convention (Art. XII, §3). In a recent and related case,<sup>2</sup> litigants advised the Court of Appeals that the issue of amending the constitution and an initiated law in a single petition is an issue of first impression in Michigan.

## 4. 100-word Statement of Purpose:

CPMC urges the Board to determine that the form of the petition is insufficient for a fourth reason, namely that the proposal is defective because it cannot be adequately described in the 100-word statement of purpose as required by MI Const. Art. XII, §2 and MCL 168.32. As support for its position CPMC cites the plurality opinion in the *Reform Michigan Government Now* case, where three Justices urged rejection of that petition on the basis that it was impossible to capture the full impact of the proposal in 100 words or less. See *Reform*

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<sup>1</sup> The Court of Appeals opinion in the *Reform Michigan Government Now* case is reported at 280 Mich App 273 (2008).

<sup>2</sup> Please see the explanatory note on “Pending Litigation,” *Protect MI Constitution v Secretary of State*, Court of Appeals Dkt. No. 311504 in the Staff Report for the Citizens for More Michigan Jobs dated August 15, 2012.

*Michigan Government Now* case, 482 Mich 960 (2008) (Cavanaugh, Weaver, and Markman, JJ, concurring).

**STAFF FINDING:** Based on the above statements and the lack of clarity on the issue of a general revision of the constitution versus a constitutional amendment, the staff expresses no opinion regarding the merits of CPMC's challenge.